LeMond Cycling, Inc. v. Trek Bicycle Corporation
Doc. 139 Att. 5

ZASTROW EXHIBIT 49

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LeMOND CYCLING, INC.,

Plaintiff,

vs. Case No. 08-1010

TREK BICYCLE CORPORATION,

Defendant/Third-Party Plaintiff,

vs.

GREG LeMOND,

Third-Party Defendant.

Video Deposition of MALCOLM DAVIES

Thursday, May 14th, 2009

9:07 a.m.

at

GASS WEBER MULLINS LLC
309 North Water Street
Milwaukee, Wisconsin

Reported by Kealoha A. Schupp, RPR

this document, what we see here?

MS. RAHNE: Objection, asked and answered. I think he responded to my question the same way, but you're happy to do it again -- or I'm welcome to have you do it again.

THE WITNESS: Okay.

BY MR. WEBER:

Q **Yeah, so she's making a comment for the judge's benefit later on.**

For purp -- our purposes --

A Okay.

Q **-- explain to the jury what we see here in Exhibit 195.**

A Okay. So this is an e-mail that I -- I received an e-mail from one of my direct reports, Harald Schmiedel, in early October 2007 relating to an interview that Greg LeMond gave to Tour magazine. The interview was published early in September 2007.

And the second part is an e-mail from me forwarding Harold's e-mail but also commenting from myself to John Burke. It was to me, I think. I'm sorry. I've got to read the dates again. October 9th, same day. The comment I made to John obviously where I said that I thought, whilst I had great respect for Greg and his achievements in the sport, I would say that Greg was one of my heroes when I was a young guy in the cycle -- cycling business. I followed his tour wins in the -- in the late '80s very closely.

Whilst I had respect for what he had achieved there, I thought commercially he was an idiot, because his comments in Tour magazine, his response to that particular question was very damaging to his reputation and Trek's reputation, mostly because you have to understand at this time of year what -- what we're trying to do.

It's a very focused period in the year from the late part of August, very end of August, through till the middle of October where we are trying to sell our product in for the following season. We're trying to get the dealers to buy the bikes basically and commit to selling the brand and commit to selling the line of bicycles for the following year right through until the summer of 2008 would be the case here.

So we had spent considerable efforts preparing for a big trade show, Euro-Bike. We had spent considerable efforts preparing for house shows, getting the LeMond bikes on show, making sure we had the required marketing materials to support the sale, training our salespeople on the technology that we were offering. We did all these things. We put it all on -- in front of the dealers, and then this article comes out in Tour magazine with Greg making a statement that basically undermines the relationship between Trek and LeMond.

And from our perspective, we saw that as very damaging, because what happens in that situation is the dealers get this feeling of uncertainty. They -- they don't like uncertainty, dealers. They like things to be very simple and straightforward. They are straightforward people. They buy bikes. They sell bikes. They get behind the brand. They don't want to have something going on that they don't know what's going to come down the road six months from now.

And my salespeople were very frustrated that they spent time talking about this issue instead of selling the bikes. Harald Schmiedel was extremely frustrated having spent, you know, days in front of dealers selling Trek bikes, LeMond bikes, Fischer bikes to have part of his time, which is fairly short with each dealer, highjacked by a conversation about what Greg had said in Tour magazine. And from my perspective, it was very damaging. And that's why I sent the -- the note to John, because I was -- I was, you know, expressing the frustration of my organization.

Q **Is there some connection between Tour magazine and Euro-Bike? Is there some overlap between the two?**

A No connection other than the fact that this particular issue is the issue that is published to coincide with the show. The show runs four days. It drops on the doormat the day the show opens.

So that's -- that's the -- it's the one that Tour magazine would be at the show selling or giving out -- you have people reading it having just received it, so that's the connection really. But no -- no commercial connection.

Q **All right. But it is a -- do I understand it to be then an edition that's geared specifically for attendees at Euro-Bike?**

A Yes.

Q **And describe for the jury a little bit about Euro-Bike. How does it work? Is Trek the only company there? Are your competitors there? How does it happen?**

A Euro-Bike is probably now the largest show in the world for bicycle products, high-end sport part of the market. So all of the major companies would be at that show. I can't even begin to tell you how many companies there are there.

But every major manufacturer would be introducing their 2008 product line at this show. We were one of, oh, I don't know, I guess at least 100 companies selling high-end road bikes in that business.

Typically dealers come to our booth, which is about 600 square meters of product. It's quite a big space, but typically they would come and spend anything -- depending on how committed they were to the -- the Trek family of brands, 30 -- 30 minutes to 90 minutes on our booth. So we have a very limited time, or our salespeople have a very limited time to get the job done.

They -- you know, they're talking about a huge range of products, both Trek, both LeMond, Fischer, Diamante, our after-market program, business in general. They really don't have a lot of time, and if -- if an issue that is really irrelevant as far as selling the stuff goes, comes up and highjacks 10, 15 minutes of their time, then they get pretty frustrated, and that comes out in their actions. And it reflects in our business, and it damages our opportunity to sell the product.

Q **Okay. Now, you mentioned that this is -- did you say it's a German language magazine, Tour?**
A It is German language magazine, yes.
Q **Did you have follow-up house events in Germany after Euro-Bike?**
A Yeah. We would have house shows in Germany where we would get to spend a bit more time with each dealer and we would be able to focus specifically on their order. So our -- our goal at the house shows is -- I'm -- let's back up.
Our goal at the Euro-Bike show is to present the product and get the dealer excited about new stuff. Our goal at a house show is to specifically get, I need three of those bikes in size 15 inch in blue, a detailed order. So that -- that's the difference between the two. The dealer would spend a lot more time with us at the house show.
But again, if that -- that house show experience gets further highjacked by a conversation about Greg's comments in Tour magazine, then that's wasted time. Now, if you --
Q **And is it your understanding that, in fact, in these German house shows thereafter that the issues that were raised in Tour magazine did highjack part of the conversations?**

A It definitely continued. I mean, the timing I think is important here, because you see this message came in October, which is sometime after the -- the Euro-Bike show. It would have been during the German dealer house shows, and it would have been the result of the -- you know, we were starting to see the impact of dealers not buying LeMond bikes or not wanting to sign up again for the LeMond line in 2008. And, you know, I think it's -- it's clear that from the timing of the message that it prevailed for more than just a couple hours.

Q **All right. Were you aware at that time that from time to time in years past Mr. LeMond had raised the idea of, gee, I'd like to see more LeMond-branded bikes sold in Europe?**

A Yes.

Q **And was this Euro-Bike effort and the house show efforts an effort you and your team were making to bring about that resolve?**

A Definitely. I mean this is the start -- I think I said earlier in answer to a question before that it starts here. You have to get the dealers on board with the brand, with the product, and if you don't do that, you will -- you can do no -- no -- an endless amount of consumer marketing subsequently; if you